

**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

<b>IN THE MATTER OF:</b>	)	
	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
<b>PREMIER LAND AND</b>	)	
<b>DEVELOPMENT, LLC</b>	)	
<b>and</b>	)	
<b>B &amp; W EXCAVATION, LLC</b>	)	
	)	
<b>RESPONDENTS</b>	)	<b>CASE NO. WPC 07-0189</b>
	)	
	)	

**DIRECTOR’S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, Director of the Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Division of Water Pollution Control (hereinafter the “division”) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the “department”).

## **II.**

Premier Land and Development LLC, (hereinafter the "Respondent Premier") is a limited liability company licensed to conduct business in Tennessee. Respondent Premier is the owner/developer of a residential housing development known as Golf View Estates (hereinafter the "site") in Maury County. Service of process may be made on Respondent Premier through its Registered Agent, Mark Mihasci, 2831 Hickory Hill Church Road, Shelbyville, TN 37160.

## **III.**

B & W Excavation LLC (hereinafter the "Respondent B&W") is a limited liability corporation licensed to conduct business in Tennessee. Respondent B&W was contracted by Respondent Premier to perform work at the site. Service of process may be made on Respondent B&W through its Registered Agent, B & W Landscaping & Excavating, 2831 Hickory Hill Church Road, Shelbyville, TN 37160.

## **JURISDICTION**

## **IV.**

Whenever the commissioner has reason to believe that a violation of the Water Quality Control Act of 1977 (hereinafter the "Act"), Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq, has occurred or is about to occur, the commissioner may issue a complaint to the violator and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties

against any violator of the Act, pursuant to T.C.A. § 69-3-115; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. § 69-3-116. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as Chapters 1200-4-3–4 of the *Official Compilation: Rules and Regulations of the State of Tennessee*. Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director of the division any of the powers, duties, and responsibilities of the commissioner under the Act.

## V.

The Respondents are "persons" as defined by T.C.A. § 69-3-103(20) and, as herein described, have violated the Act.

## VI.

The unnamed tributary to McCutcheon Creek as referred to herein, is “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses. In accordance with Department Rule 1200-4-4, “Use Classifications for Surface Waters,” the unnamed tributary to McCutcheon Creek has been classified for the following uses: Fish and Aquatic Life, Recreation, Irrigation, and Livestock Watering and Wildlife.

## **VII.**

Tennessee Code Annotated § 69-3-108 requires a person to obtain coverage under a permit from the department prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the general permit for Storm Water Discharges Associated with Construction Activity (hereinafter the “TNCGP”) may be obtained by submittal of a Notice of Intent (NOI), a site-specific Storm Water Pollution Prevention Plan (SWPPP) and an appropriate fee.

## **FACTS**

## **VIII.**

On June 13, 2006, division personnel conducted a compliance investigation at the site. The Respondents failed to provide written inspection reports, and the SWPPP was not available on site. In addition, the NOC was not posted on site.

## **IX.**

On June 20, 2006, an Expedited Director’s Order (EDO) was issued to Respondent Premier for the violations noted during the June 13, 2006 site inspection. Respondent Premier waived the right to appeal and paid the full penalty to the division on July 12, 2006.

## **X.**

On July 26, 2007, division personnel conducted a complaint inspection at the site. During the inspection division personnel observed discolored water discharging from a detention pond constructed on site. The detention pond failed to provide enough detention time to allow for proper settling. The discharge flowed into a drainage channel on Weaver Farms Subdivision. An inspection of the drainage channel revealed sediment deposits from the Respondents' outfall to a road crossing at Grey Fox Lane.

## **XI.**

On August 1, 2007, the division issued a Notice of Violation (NOV) to the Respondents for the violations observed during the July 26, 2007, site visit. The NOV requested the Respondents to immediately take the appropriate measures to bring the site into compliance.

## **VIOLATIONS**

## **XII.**

By failing to comply with the terms and conditions of the TNCGP as described herein, the Respondents have violated T.C.A. §§ 69-3-108(b), 114(b), which state in part:

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

### **ORDER AND ASSESSMENT**

#### **XIII.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 109, 115–16, I, Paul E. Davis, hereby issue the following ORDER AND ASSESSMENT to the Respondents:

- a. The Respondents shall implement appropriate EPSC measures to assure that no eroded material leaves the site and enters waters of the state. Documentation that EPSC measures have been implemented is to be sent

within 15 days of receipt of this Order and Assessment to the manager of the Division of Water Pollution Control located at the Columbia Environmental Field Office (CL-EFO), 2484 Park Plus Drive, Columbia, Tennessee, 38401.

2. The Respondents shall, within 14 days of receipt of this Order, submit an updated SWPPP for review and approval to the Water Pollution Control manager at the CL-EFO at the address above.
3. The Respondents shall, within six months of receipt of this Order and Assessment, attend a Fundamentals of Erosion and Sediment Control Workshop provided by the Tennessee Department of Environment and Conservation, and submit documentation of successful completion to the CL-EFO and a copy to the manager of the Enforcement and Compliance Section of Water Pollution Control at, 401 Church Street, 6<sup>th</sup> Floor L&C Annex, Nashville, Tennessee 37243-1534. Information may be found on the program website at <http://www.tnepsc.org>.
4. The Respondents are hereby assessed a CIVIL PENALTY in the amount of SEVEN THOUSAND FIVE HUNDRED DOLLARS (\$7,500.00), payable as follows:
  - a. The Respondents shall, within 30 DAYS of receipt of this Order and Assessment, pay to the division TWO THOUSAND DOLLARS (\$2,000.00).

- b. The Respondents shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondents fail to comply with Item 1 above, to be paid within 30 days of default.
- c. The Respondents shall pay TWO THOUSAND DOLLARS (\$2,000.00) to the division in the event the Respondents fail to comply with Item 2 above, to be paid within 30 days of default.
- d. The Respondents shall pay ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division in the event the Respondents fail to comply with Item 3 above, to be paid within 30 days of default.
- e. The Respondents shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

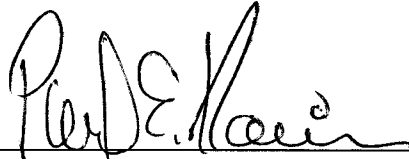
The director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondents shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondents are advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law



or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondents in the future.

Issued by the director of the Division of Water Pollution Control on this \_\_\_\_\_ day of July 2007.



PAUL E. DAVIS, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§ 69-3-109, 115, allow any Respondent named herein to secure review of this Order and Assessment. In order to secure review of this Order and Assessment, the Respondent must file with the Department's Office of General Counsel a written petition setting forth each of the Respondent's contentions and requesting a hearing before the Water Quality Control Board. The Respondent must file the written petition within thirty (30) days of receiving this Order and Assessment. The petition should be sent to: "Appeal of Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548".

If the required written petition is not filed within thirty (30) days of receipt of this Order and Assessment, the Order and Assessment shall become final and will be considered as an agreement to entry of a judgment by consent. Consequently, the Order and Assessment will not be subject to review pursuant to T.C.A. §§ 69-3-109, 115.

Any hearing of this case before the Water Quality Control Board for which a Respondent properly petitions is a contested case hearing governed by T.C.A. § 4-5-301 et seq of the Uniform Administrative Procedures Act, and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. The hearing is in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses on its behalf to testify.

If the Respondent is an individual, the Respondent may either obtain legal counsel representation in this matter, both in filing its written petition and in presenting evidence at the hearing, or proceed without an attorney. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Payment of the civil penalty shall be made payable to "Treasurer, State of Tennessee," and sent to the Tennessee Department of Environment and Conservation, Division of Fiscal Services – Consolidated Fee Section, 14th Floor L&C Tower, 401 Church Street, Nashville, TN 37243. All other correspondence regarding this matter should be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, at 6th Floor L & C Annex, 401 Church Street, Nashville, Tennessee 37243-1534. All payments and correspondence should include the Respondent's name and case number as shown on the first page of this Order and Assessment.